

July 2, 2014

**LETTER TO ALL PARTIES CURRENTLY ENGAGED IN MEDIATIONS
REGARDING THE FUTURE OF THE DETROIT WATER AND
SEWERAGE DEPARTMENT (DWSD)**

We write to you because the future of DWSD is currently being determined behind closed doors. Mediation by United States District Court judges and local political leaders will determine the utility's future in the aftermath of the city's bankruptcy arrangements.

We are writing to urge you to uphold the human right to water and the public trust doctrine in your deliberations regarding water and sewerage services in the city of Detroit.

This crisis can only be solved by ensuring economic and social justice through equitable public funding for the DWSD and its vital services, as well as sound environmental management. This is in keeping with the public trust doctrine and the human right to water. Whatever the outcome of the current mediation and pending privatization bids for the system and its assets, these core public interest values and policy objectives must guide the process and its eventual outcome. The current strategy of compensating for the lack of equitable funding by transferring increasing costs to users has led to human rights violations and stems from a failure to respect water as a public trust.

On June 25, three UN experts on the human rights to drinking water and sanitation, on adequate housing and on extreme poverty expressed concerns regarding water shut-offs in Detroit.

In their press release they state, ***"Disconnection of water services because of failure to pay due to lack of means constitutes a violation of the human right to water and other international human rights."***

The brutal policy of shutting off residents' access to drinking water has rightly drawn the attention and the ire of the world to Detroit's unjust emergency management regime and its abuse of Detroiters, in disregard of law.

Mass water service shutoff policies implemented by DWSD in Detroit have created extreme emotional and physical hardship for families—including the children, seniors and people with disabilities—forced out of their homes to live with neighbors and family. The human and social cost of this aggressive,

uncivil process—in the face of overwhelming unemployment and abject poverty—creates the potential for disease and medical injury. It puts everyone — the whole community—at risk.

DWSD withdraws water from the Detroit River and Lake Huron and transfers this water through its publicly owned system to its residents and users. The Detroit River and Lake Huron are part of the Great Lakes, connecting and tributary waters. Based on United States Supreme Court and Michigan Supreme Court decisions, these waters are held by the State as a public trust and as sovereign trustee for its citizens.

Citizens are the legally recognized beneficiaries of this public trust. They are entitled to their individual and shared right to use and enjoy these public trust waters for drinking water, sustenance, health, boating, bathing, swimming and navigation. The subordination or interference with these protected rights and uses of citizens as beneficiaries constitutes a violation of the basic rights protected by the public trust.

The current leadership of DWSD— the Governor, the Emergency Manager and their law firm— has failed to display sound stewardship. Mass residential water shutoffs to thousands of Detroiters reinforce a commercial and corporate agenda.

DWSD has attempted to justify this blatant violation by describing it as a commercial success. Nevertheless, DWSD's own statement reveals that nearly 25% of all affected households go without water for longer than 48 hours. This only rubs salt in the wounds of those who are making major sacrifices to have connections restored.

We demand that the water crisis in Detroit be solved through:

1. Immediate cessation of the shutoffs and restoration of household water connections;
2. Implementation of the city's water affordability plan as originally proposed in 2005, beyond the limited version passed in modified form by City Council and implemented by DWSD in 2006;
3. Providing the public with full, timely and adequate information and accountable oversight regarding the conversations taking place about the future of DWSD; and
4. Recognition of the human right to water and the public trust in the water of Detroit.

Authorities with responsibility for DWSD's future, and for our communities' public health, human rights, and public trust rights must step up to their responsibilities. **All people in metro Detroit are entitled to equitable access to affordable water, sanitation and sewer services.**

Sincerely,

Michigan Welfare Rights Organization

Peoples Water Board

Blue Planet Project

Food & Water Watch

Cc: Judge Gerald Rosen
Judge Sean Cox
Judge Steven Rhodes
Rep. Conyers
Rep. Peters
Sen. Levin
Sen. Stabenow
President Obama
Surgeon General Lushniak
Macomb County Executive Hackel
Oakland County Executive Patterson
Oakland County Deputy Executive Daddow
Wayne County Executive Ficano
Board of Water Commissioners
Governor Snyder
Jones Day
Emergency Manager Orr
Mayor of Detroit
Detroit City Council

ADDENDUM – Selected Legal Authorities

The public trust applies to the Great Lakes, connecting rivers and waters, and all navigable inland lakes and streams.

Illinois Central R Rd v Illinois, 146 U.S. 387 (1892); *Obrecht v National Gypsum Co*, 361 Mich 399 (1960); *Collins v Gerhard*, 231 Mich 1 (1927). The public trust places title to water in the State as sovereign and is held by the State as trustee for its beneficiaries -- each and every citizen-- to protect their individual and shared use of these waters as a commons for fishing, sustenance, swimming, bathing, boating, and other recreation or water-dependent commerce. The government may not transfer ownership or control for a primarily private purpose, and the government and others cannot interfere with the citizens' use as beneficiaries for the protected public trust uses described above. See also *Sax, Joseph, The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich L. Rev 471, 489 (1970).

Water withdrawn and transferred by the Detroit Water Board System from the Detroit River and Lake Huron are public trust waters. Public common waters held in public trust for basic rights of citizens as beneficiaries do not lose their public trust character if they are gathered and distributed on a basis of cost by a taxpayer publicly owned infrastructure. The transfer of proceeds or public infrastructure and public trust water to others as private persons for private gain, including municipalities to their general fund free of the municipal water system, violates these fundamental public trust principles. *Mayor of Clifton v Passaic Valley Water Com'n*, 579 A 2d 760 (N.J. 1987); *Arnold v Mundy*, 6 N.J.L. 1 (1821)

On July 28, 2010, the United Nations General Assembly adopted Resolution 64/292 on the human right to water and sanitation, recognizing “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights...”

Water taken by DWSD from the Detroit River and Lake Huron is held in public trust to protect rights of basic sustenance, such as bathing, drinking and sanitation or health.